

**§ 300.405 Requirement for contract.**

(a) A written contract awarded in accordance with procedures stipulated in the Federal Acquisition Regulations is required between the Federal agency and a commercial recruiting firm or nonprofit employment service. The contract will satisfy the “written request” required by 18 U.S.C. 211. That statute prohibits the acceptance of payment for aiding an individual to obtain Federal employment *except* when an employment agency renders services pursuant to the written request of an executive department or agency.

(b) The contract must include the qualifications requirements for the position(s) to be filled and also provide that the firm or service will:

(1) Screen candidates only against the basic qualifications requirements for the position(s) specified by the Federal agency in the contract and refer to the agency all candidates who appear to meet those requirements;

(2) Refer to the Federal agency only those applicants from whom the firm or service has not accepted fees other than those permitted under § 300.404(b) of this part;

(3) Not imply that it is the sole or primary avenue for employment with the Federal Government or a specific Federal agency; and

(4) Recruit and refer candidates in accordance with applicable merit principles and equal opportunity laws.

**§ 300.406 Agency responsibilities.**

(a) The purpose of a commercial recruiting firm or nonprofit employment service is to serve as an additional source of applicants. Once recruited, applicants must be evaluated and appointed through regular civil service employment procedures.

(1) For a competitive service position, an individual must be appointed in accordance with the terms of applicable competitive service procedures.

(2) For an excepted service position, an individual must be appointed in accordance with the terms of the applicable appointing authority and the requirements set out in part 302 of this chapter.

(3) For a Senior Executive Service position filled by career appointment, an individual must be appointed in ac-

cordance with the competitive process described in 5 U.S.C. 3393.

(b) In order to use commercial recruiting firms or nonprofit employment services, agencies are required to:

(1) Make known that applicants may apply directly to the Government and thus need not apply through the commercial recruiting firm or nonprofit employment service;

(2) Give the same consideration to candidates who have applied directly and candidates referred from the commercial recruiting firm or nonprofit employment service; and

(3) Follow all requirements for appointment, including veterans preference, where applicable.

**§ 300.407 Documentation.**

(a) Agencies are required to maintain records necessary to determine that using commercial recruiting firms or nonprofit employment services is cost effective and has not resulted in the violation of merit system principles or the commission of any prohibited personnel practice.

(b) When requested by OPM, agencies will provide reports on the use of commercial recruiting firms, based on the records required in paragraph (a) of this section.

[53 FR 51222, Dec. 21, 1988, as amended at 60 FR 3057, Jan. 13, 1995]

**§ 300.408 Corrective action.**

Upon evidence of failure to comply with these regulations, OPM may, pursuant to its authority, order the agency to take appropriate corrective action.

**Subpart E—Use of Private Sector Temporaries**

SOURCE: 54 FR 3766, Jan. 25, 1989, unless otherwise noted.

**§ 300.501 Definitions.**

For purposes of this subpart:

(a) A *temporary help service firm* is a private sector entity which quickly provides other organizations with specific services performed by its pool of employees, possessing the appropriate work skills, for brief or intermittent

## § 300.502

## 5 CFR Ch. I (1–1–13 Edition)

periods. The firm is the legally responsible employer and maintains that relationship during the time its employees are assigned to a client. The firm, not the client organization, recruits, tests, hires, trains, assigns, pays, provides benefits and leave to, and as necessary, addresses performance problems, disciplines, and terminates its employees. Among other employer obligations, the firm is responsible for payroll deductions and payment of income taxes, social security (FICA), unemployment insurance, and workers' compensation, and shall provide required liability insurance and bonding.

(b) *Private sector temporaries* or *outside temporaries* are those employees of a temporary help service firm who are supervised and paid by that firm and whom that firm assigns to various client organizations who have contracted for the temporary use of their skills when required.

(c) *Parental and family responsibilities* are defined in OPM issuances and include situations such as absence for pregnancy, childbirth, child care, and care for elderly or infirm parents or other dependents.

(d) A *Federal supervisor* of Federal employees is defined in 5 U.S.C. 7103(a)(10) as

an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment \*\*\*

(e) A *critical need* is a sudden or unexpected occurrence; an emergency; a pressing necessity; or an exigency. Such occasions are characterized by additional work or deadlines required by statute, Executive order, court order, regulation, or formal directive from the head of an agency or subordinate official authorized to take final action on behalf of the agency head. A recurring, cyclical peak workload, by itself, is not a critical need.

(f) A *local commuting area* is defined in part 351 of this chapter.

[54 FR 3766, Jan. 25, 1989, as amended at 66 FR 66710, Dec. 27, 2001]

### § 300.502 Coverage.

(a) These regulations apply to the competitive service and to Schedules A and B in the excepted service.

(b) Agencies may not use temporary help services for the Senior Executive Service or for the work of managerial or supervisory positions.

[61 FR 19510, May 2, 1996]

### § 300.503 Conditions for using private sector temporaries.

An agency may enter into a contract or other procurement arrangement with a temporary help service firm for the brief or intermittent use of the skills of private sector temporaries, when required, and may call for those services, subject to these conditions:

(a) One of the following short-term situations exists—

(1) An employee is absent for a temporary period because of a personal need including emergency, accident, illness, parental or family responsibilities, or mandatory jury service, but not including vacations or other circumstances which are not shown to be compelling in the judgment of the agency, or

(2) An agency must carry out work for a temporary period which cannot be delayed in the judgment of the agency because of a critical need.

(b) The need cannot be met with current employees or through the direct appointment of temporary employees within the time available by the date, and for the duration of time, help is needed. At minimum, this should include an agency determination that there are no qualified candidates on the applicant supply file and on the re-employment priority list (both of which must provide preference for veterans), and no qualified disabled veterans with a compensable service-connected disability of 30 percent or more under 5 U.S.C. 3112, who are immediately available for temporary appointment of the duration required, and that employees cannot be reassigned or detailed without causing undue delay in their regular work. In instances where a need is foreseeable, as when approval of employee absence is requested well in advance, an agency may have sufficient time to follow the